



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 177798

PRELIMINARY RECITALS

Pursuant to a petition filed on November 3, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (the agency) regarding Medical Assistance (MA), a hearing was held on December 1, 2016, by telephone.

The issue for determination is whether the agency correctly determined the personal care worker (PCW) hours for petitioner pursuant to his prior authorization (PA) request.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: written submittal of [REDACTED], Nurse Consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is 65 and his diagnoses include above knee amputation of the left leg and a partial amputation of the right

foot, hypertension, right hip and knee pain, phantom limb pain, narcotic dependence, diabetes mellitus, type 2 uncontrolled with peripheral neuropathy.

2. On September 20, 2016 the petitioner's PCW provider, [REDACTED] submitted a PA for petitioner to receive PCW services in the amount of 28 hours per week, to start September 25, 2016.
3. On October 20, 2016 the agency issued a notice to petitioner stating that the hours of the requested PCW services were modified because all of the requested PCW services were not shown to be medically necessary.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

The agency modified the PA in this case because it determined that the documentation submitted with it did not support the medical necessity for all of the hours requested because it was not consistent with the medical information submitted. The agency's summary dated November 15, 2016 notes that PCW tasks do not include assistance with insulin shots, and thus cannot be considered in determining whether a PCW is necessary. His past clinical notes do not show that he requires assistance with toileting, mobility or transferring. One clinic note from October 3, 2016 indicates he was using crutches for mobility, which was consistent with September's ability. The medical information submitted does not show petitioner

having all the limitations identified during the Personal Care Screening Tool process. In reviewing the information submitted by the provider, I can therefore see how the agency was unable to determine that all of the PCW services were medically necessary.

The petitioner's son was at the hearing and testified to petitioner's limitations due to pain and balance issues. However, as stated above, the PA fails to show this through his medical documentation. The record was held open to provide additional opportunity to get medical evidence, but no additional information was received. There was no explanation for how petitioner's status could have changed from -using crutches and having his wound nurse visits and physical therapy decreased due to progress- to only using a wheelchair/being unable to stand for mobility purposes in the 2 months since that last clinic note. And while I do not doubt petitioner has limitations, they must be identified and verified so that petitioner's condition is clear to the agency and based on the orders of his physician as required under MA rules. I therefore must conclude that the agency was correct in its modification of the PA request. As in all PAs, the petitioner bears the burden of proving the services he requests are necessary, and that has not been done. I suggest that the petitioner, his PCW provider, and the medical specialists he sees review his PCW needs and that they provide increased documentation to support a new request for PCW time if it is indeed medically necessary. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly determined the personal care worker (PCW) hours for petitioner pursuant to his prior authorization (PA) request.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of January, 2017

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 30, 2017.

Division of Health Care Access and Accountability